

the Biological Resources and Aesthetics section. The removal of trees would be subject to replacement at a two to one ratio. See pages 30 and 31 of the draft MND for the analysis on the project's impacts on aesthetics. See also Response HKC-16.

HKC-9: The comment states that the MND fails to discuss whether the project complies with the requirements for a coastal development permit. The project's potential impacts on coastal resources and access are analyzed in the Land Use and Planning section of the draft MND. The draft MND concludes that the project will not have adverse impacts on coastal resources and does not conflict with the California Coastal Act. The comment also states that the MND fails to analyze potential impacts of the project's displacement under the Ellis Act. However, the City Attorney's office has reviewed the Ellis Act and indicated that it would not apply to the project as proposed. If there are aspects of the project that are determined to be subject to the provisions of the Ellis Act as the project progresses, the project would be required to comply with any applicable requirements of the statute. The comment states that an EIR is required to analyze the scope of the conditional use permit and coastal development permit and impacts from any conditions associated with the permits. A conditional use permit and coastal development permit are required based on aspects of the proposed project (the proposed block retaining wall and development in the coastal zone, respectively), the scope of which has been adequately described in the project description and analyzed, in whole, throughout the draft MND. Project approval would be subject to standard conditions and code requirements. No conditions with the potential to cause significant environmental impacts are recommended or foreseeable at this time. Any conditions of approval with the potential to have significant adverse environmental impacts that are recommended or adopted during consideration of the project's discretionary permits, would need to be analyzed and likely recirculated for public review and comment.

HKC-10: The comment states that the MND "wrongfully claims that the Project will not divide an established community" and states that an EIR is required to analyze the impacts to the mobile home park. As stated in the comment, the project would remove eight mobile homes, reconstruct an existing access road/Fire lane and construct a block retaining wall along the project's property line. However, in relation to the existing configuration of the mobile home park, the access road/Fire lane will be reconstructed so that the park configuration will be the same as it currently exists. The block wall will result in a grade separation similar to the grade separation that currently exists. In addition, the comment states that the proposed block wall will impede open access to the street. However, no access points to the mobile home park property will be permanently removed and the block wall will replace an existing wood fence. The project does not propose to physically divide the mobile home park from any current access, infrastructure or services that are currently provided.

HKC-11: The comment states that the project would result in significant growth inducing impacts and that preparation of an EIR is required. The comment also states, and cites CEQA case law, that a project's conformity with the General Plan "does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects." The draft MND analyzes the project's potential impacts regarding population growth both directly and indirectly. The

project does not propose new uses or development (i.e. – a new residential subdivision or a new commercial shopping center) that would result in direct growth-inducing impacts nor does it result in significant indirect growth-inducing impacts (i.e. – a new road, improvements to or installation of new utilities). Although the project provides for increased capacity on the subject segment of Atlanta Avenue, it would not induce substantial population growth in the area; particularly since the area surrounding the project site is largely built out or entitled for development. In addition, the project would bring the subject segment into compliance with its General Plan classification, which would accommodate population growth already assumed by the General Plan and improve the level of service on Atlanta Avenue compared to existing conditions. The applicability of the cited case law to the proposed project is inconsequential. The project cited involved construction of sewer lines and a new road in an undeveloped area, which would be a catalyst for development in the area. The court determined that the impacts of development that would likely occur as a result of the project were potentially significant and needed to be evaluated in an EIR. The proposed widening of Atlanta Avenue between Huntington Street and Delaware Street would not spur development in the area that would result in substantial population growth. In addition, the case law is cited to point out that a project's conformity with the General Plan does not exempt it from having to prepare an EIR when there is a fair argument that the project would result in significant impacts. In the context of impacts on population growth, for which the case is cited, evidence has not been presented that the project would result in significant growth-inducing impacts such that a fair argument exists to require an EIR.

HKC-12: The comment states that the “MND erroneously claims that it cannot make decisions about replacement housing until it receives Federal highway funds, and thus wrongfully puts off for later mitigation in the form of a relocation plan.” The comment also asserts that the use of a future study cannot substitute as mitigation for a significant environmental effect in the MND and concludes that an EIR is required. The draft MND identifies the displacement of people/housing as a potentially significant impact. The impact (i.e. – displacement of people/housing) can be mitigated by requiring relocation of those displaced in accordance with the Federal Uniform Act. The proposed mitigation measure would ensure that all displaced people would be relocated pursuant to applicable laws, which would be defined and implemented through the required relocation plan. The relocation plan would not defer mitigation rather it would ensure that mitigation of the potentially significant impacts is implemented, thus reducing the impact to a less than significant level.

The draft MND provides several relocation alternatives, but since the City cannot negotiate with the mobile home park property owner and affected residents prior to receiving authorization for funding, the actual relocation site is purely speculative at this point. Consequently, the relocation site(s) is not reasonably foreseeable and would be analyzed for potential environmental impacts as a separate project pursuant to CEQA.

HKC-13: As discussed in the Hydrology and Water Quality section of the draft MND, the project would not alter the existing drainage pattern such that significant impacts would result from an increased rate or volume of runoff causing erosion and/or

flooding. Although the project does include grading and relocation of an existing fire access lane and drainage catch basin, the mobile home park site would maintain the same drainage pattern that presently exists. In addition, the project will require an erosion control plan and Storm Water Pollution Prevention Plan (SWPPP) to ensure that the project will not cause significant impacts to water quality from runoff during construction. Since the project is not proposing new uses or development that would increase impervious area within the project area or result in additional runoff volumes, post construction drainage would not impair the capability of the existing drainage system of the mobile home park to "adequately contain drainage flows."

HKC-14: The comment states that an EIR is required "to study whether the mitigation measures will reduce particulate matter to a less than significant level." The comment misinterprets the draft MND in the percent reduction attainable for PM<sub>10</sub> emissions from construction mitigation. The comment states that the "MND leaps to an unsupported conclusion that a 50% reduction will somehow get rid of all of the 40% excess of particulate matter, not just 50% thereof." The draft MND concludes that the localized significance threshold (LST) will be exceeded for PM<sub>10</sub>. The LST for PM<sub>10</sub> in Huntington Beach is 14 pounds per day. The project, without mitigation, would result in emissions of 21.8 pounds per day. Although the model cannot quantify the amount of PM<sub>10</sub> emissions with mitigation, it is reasonable to assume that a reduction of 50 percent of the total emissions can be achieved with mitigation. A 50 percent reduction in emissions from implementation of mitigation measure AQ-1 would result in 10.9 pounds per day. This would result in emissions below the established threshold and therefore, the impact would be mitigated to a less than significant level. It should be noted that the conclusions regarding air quality impacts in the draft MND are based on an air quality report prepared for the project by a qualified professional. In addition, a 50 percent reduction is documented in air quality data for other projects in the City and in some instances, reductions of greater than 50 percent have been achieved with similar mitigation and compliance with SCAQMD Rule 403.

HKC-15: The comment states that the MND "erroneously fails to consider the cumulative impact of potential increased traffic on long term emissions resulting from the project." The comment also asserts that an EIR is required to study the project's impacts of increased emissions from "additional traffic enabled by the Project." While the project would provide for additional capacity on the subject segment of Atlanta Avenue, it would not generate additional traffic volumes such that "long term emissions" would be cumulatively significant. Compared to existing conditions, the project may reduce vehicle emissions that would result from traffic congestion and vehicle idling. This reduction may be even greater in the long-term since congestion in the project area would likely worsen as the City approaches buildout. The comment asserts that widening the road will lead to increased traffic on the subject segment of Atlanta Avenue and that the increase in traffic will result in a cumulatively significant impact on air quality. However, no data are provided to support this claim. It is important to clarify that the proposed road widening project would not result in direct increases in traffic that are typically associated with new uses or development that would generate vehicle trips. In addition, the project does not indirectly result in significant traffic impacts since it would not induce growth (Refer to Response HKC-11). After project completion, there may be more vehicles utilizing the subject

segment of Atlanta Avenue; however, this would represent a shift in vehicles that are likely already driving in the area and not an increase in new vehicle trips. Therefore, an increase in cumulatively considerable vehicle emissions is not anticipated and impacts, as concluded in the draft MND, would be less than significant.

HKC-16: The comment states that the MND “fails to contain a tree replacement plan that would allow for replacement of the mature trees in the Park that will be eliminated.” The draft MND discloses that the project includes the removal of 25 trees within the existing mobile home park property and identifies the City’s standard policy to replace the trees at a two to one ratio. The draft MND also includes a mitigation measure that would protect nesting bird species and ensure compliance with the Migratory Bird Treaty Act (MBTA) during project construction. A plan for replacement of the trees would be included as part of the project’s landscaping plan that would be required for the project subject to review and approval by the City. The MND correctly identifies the removal of trees as a potential impact and includes the City’s standard condition for tree replacement, which would sufficiently mitigate the impact. Because the replacement of trees is a standard City policy, it does not need to be identified as a mitigation measure. Additionally, specific details of the replacement trees in the draft MND are not necessary to provide an adequate analysis of the project’s impacts.

HKC-17: The comment states that the MND “wrongfully fails to admit that construction noise is a significant impact of the Project, despite its acknowledgement that construction noise levels will increase the ambient noise levels for residents located within 50 feet more than 25 dBA up to 98 dBA....” The comment states that since the impact is concluded to be less than significant, the proposed mitigation measure is not evaluated as to whether it will reduce noise levels to a less than significant level and asserts that an EIR is required to make the determination. Although the project will result in construction noise levels exceeding daytime noise levels established in the City’s Noise Ordinance, the Noise Ordinance exempts construction noise and therefore, the impact as to whether the project will result in noise levels exceeding established standards is correctly identified as less than significant. In addition, due to the short duration of project construction, the proposed daily construction hours (limited to 7:00 AM to 4:00 PM Monday through Friday) and the intermittent nature of construction noise during various stages of project construction, the project’s temporary increase in noise beyond existing levels would be considered less than significant. It should be noted that the conclusions in the draft MND are based on a technical study, prepared by a qualified professional, of the project’s noise impacts. Therefore, the draft MND sufficiently and accurately assesses the project’s potential noise impacts pursuant to CEQA. Even though no mitigation is required to reduce impacts to a less than significant level, a mitigation measure is proposed to reduce the annoyance of construction noise on residents within the project area.

HKC-18: The comment states that the MND “insists, without any substantive discussion, that the minor mitigation measures proposed will suffice.” The analysis in the draft MND is substantially supported by factual evidence and expert opinion documented in technical reports, existing regulations and applicable codes and weighed against established thresholds of significance. Mitigation measures are recommended for those impacts that were determined to be potentially significant based on the

substantive analysis. The recommended mitigation measures are both feasible and adequate to reduce potential impacts to a less than significant level. The comment states that the MND also fails to “admit” significant effects in the areas of land use, housing, population, traffic, drainage and noise impacts. Each of the areas cited have been adequately analyzed and determined to be less than significant or less than significant with mitigation. The comment then cites CEQA case law to provide an example of a project that adopted a negative declaration wherein the court found that there was substantial evidence that the project would result in significant environmental effects. However, there is no substantial evidence, in light of the whole record (including the comment letter) that provides substantial evidence that the project would result in significant environmental impacts. In addition, the draft MND includes analysis that provides substantial evidence that the project, with mitigation, would result in less than significant environmental impacts.

HKC-19: The comment states that the MND “fails to recognize” significant environmental impacts from relocation of residents, road widening, alteration of drainage and noise and fails to sufficiently mitigate impacts such that an EIR is required. The responses to HKC-3 through HKC-18 address all of the comments related to the potential impacts described. The draft MND has adequately analyzed the project as a whole and all potential environmental impacts have been determined to be less than significant or can be mitigated to a less than significant level. None of the comments in the letter presents substantial evidence such that a fair argument can be made to require an EIR for the project. The comment also states that the MND “demonstrates that the Project is not necessary or viable at this time.” As mentioned in Response HKC-4, the role of the draft MND is not to provide justification for the project. In addition, the project has been proposed by the City’s Department of Public Works and is programmed and funded as a RSTP project. Therefore, the project would be considered a viable project and, as such, all direct impacts and reasonably foreseeable indirect impacts have been analyzed pursuant to CEQA.

V. ERRATA TO RECIRCULATED DRAFT MITIGATED NEGATIVE  
DECLARATION NO. 09-001

The following changes to Draft Mitigated Negative Declaration No. 09-001 and Initial Study Checklist are as noted below. The changes to the Draft Mitigated Negative Declaration as they relate to issues contained within this errata sheet do not affect the overall conclusions of the environmental document. Revisions are below as excerpts from the Initial Study text, with a ~~line-through~~ deleted text and **bold** and double-underlined font beneath inserted text. In order to indicate the location in the Initial Study where text has been changed, the reader is referred to the page number of the Initial Study.

Population and Housing – page 7

Along with the acquisition of this 25 feet wide by 630 feet long (approx.) strip of land from the mobile home park immediately south of Atlanta Avenue, eight homes (Unit Nos. 101, 102, 201, 301, 302, 401, 501, and 502) consisting of ~~14~~ **16** residents will also need to be removed in order to construct the proposed street widening project. The removal of the homes and displacement of the ~~14~~ **16** impacted residents is subject to the relocation requirements under the Federal Uniform Act. The Federal Uniform Act, passed by Congress in 1970, is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property or displace persons from their homes, businesses, or farms.

Population and Housing – page 8

While eight homes with ~~14~~ **16** residents would not necessarily be considered a substantial relocation, in order to ensure that impacts to the ~~14~~ **16** residents that would require relocation is less than significant, the following mitigation measure is recommended:

Mandatory Findings of Significance – page 36

Mitigation for impacts identified in the area of population and housing are due to relocation of ~~14~~ **16** residents that would occur as a result of acquisition of additional right-of-way for the project and not due to substantial increases in population or indirect growth that would result in cumulatively considerable impacts.

## APPENDIX A

Comments on Draft MND No. 09-001  
(Comment Period 8/5/10 – 9/3/10)

## DEPARTMENT OF TRANSPORTATION

District 12  
3347 Michelson Drive, Suite 100  
Irvine, CA 92612-8894  
Tel: (949) 724-2267  
Fax: (949) 724-2592



*Flex your power!  
Be energy efficient!*

September 2, 2010

Ms. Jennifer Villaseñor  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

File: IGR/CEQA  
SCH #: 2010081014  
Log #: 2568  
SR-39

**Subject: Atlanta Avenue Widening Project**

Dear Ms. Villaseñor:

Thank you for the opportunity to review and comment on the **Mitigated Negative Declaration for the Atlanta Avenue Widening Project**. The project proposes to widen the south side of Atlanta Avenue, between Huntington Street and Delaware Street, to comply with the primary arterial street classification in the General Plan Circulation Element and the Orange County Transportation Authority's Master Plan of Arterial Highways (MPAH). The project site is located within the City of Huntington Beach.

**The California Department of Transportation, District 12 is a commenting agency on this project, and has no comment at this time.**

Please continue to keep us informed of this project and any future developments which could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to call Zhongping (John) Xu at (949) 724-2338.

Sincerely,

CHRISTOPHER HERRE  
Branch Chief, Local Development/Intergovernmental Review

c: Terry Roberts, Office of Planning and Research



## NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364  
SACRAMENTO, CA 95814  
(916) 653-6251  
Fax (916) 657-5390  
Web Site [www.nahc.ca.gov](http://www.nahc.ca.gov)  
e-mail: [ds\\_nahc@pacbell.net](mailto:ds_nahc@pacbell.net)



RECEIVED  
AUG 23 2010  
Dept. of Planning  
& Building

August 18, 2010

Ms. Jennifer Villaseñor, Acting Senior Planner

**CITY OF HUNTINGTON BEACH**

2000 Main Street  
Huntington Beach, CA 92648

Re: SCH#2010081014; Notice of Completion; proposed Mitigated Negative Declaration for the Atlanta Avenue Widening Project (CDP No. 2009-001; CUP No. 2009-019) located in the City of Huntington Beach; Orange County, California.

Dear Ms. Villaseñor:

The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources. (Also see *Environmental Protection Information Center v. Johnson* (1985) 170 Cal App. 3<sup>rd</sup> 604). The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amendment effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance. The lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. State law also addresses Native American Religious Expression in Public Resources Code §5097.9.

NAHC-1

The Native American Heritage Commission did perform a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural Resources were not identified within one-half mile of the APE identified for the project. However, there are Native American cultural resources in close proximity to the APE. Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Enclosed are the names of the culturally affiliated tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for this purpose, that may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We recommend that you contact persons on the attached list of Native American contacts. A Native American Tribe or Tribal Elder may be the only source of information about a cultural resource.. Also, the NAHC recommends that a Native American Monitor or Native American culturally knowledgeable person be employed whenever a professional archaeologist is employed during the 'Initial Study' and in other phases of the environmental planning processes.

NAHC-2

Furthermore the NAHC recommends that you contact the California Historic Resources Information System (CHRIS) at the Office of Historic Preservation (OHP)

NAHC-3

ATTACHMENT NO. 4.64

Coordinator's office (at (916) 653-7278, for referral to the nearest OHP Information Center of which there are 10.

NAHC-3  
continued

Consultation with tribes and interested Native American tribes and interested Native American individuals, as consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 [f] *et seq.*), 36 CFR Part 800.3, the President's Council on Environmental Quality (CSQ; 42 U.S.C. 4371 *et seq.*) and NAGPRA (25 U.S.C. 3001-3013), as appropriate. The 1992 *Secretary of the Interior's Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including *cultural landscapes*. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e).

NAHC-4

Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a project. Also, Public Resources Code Section 5097.98 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'. Discussion of these should be included in your environmental documents, as appropriate.

NAHC-5

The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited from and may wish to reveal the nature of identified cultural resources/historic properties. Confidentiality of 'historic properties of religious and cultural significance' may also be protected under Section 304 of the NHPA or at the Secretary of the Interior's discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C. 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APE and possibly threatened by proposed project activity.

NAHC-6

CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens. Although tribal consultation under the California Environmental Quality Act (CEQA; CA Public Resources Code Section 21000 – 21177) is 'advisory' rather than mandated, the NAHC does request 'lead agencies' to work with tribes and interested Native American individuals as 'consulting parties,' on the list provided by the NAHC in order that cultural resources will be protected. However, the 2006 SB 1059 the state enabling legislation to the Federal Energy Policy Act of 2005, does mandate tribal consultation for the 'electric transmission corridors'. This is codified in the California Public Resources Code, Chapter 4.3, and §25330 to Division 15, requires consultation with California Native American tribes, and identifies both federally recognized and non-federally recognized on a list maintained by the NAHC

NAHC-7

Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. . Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.

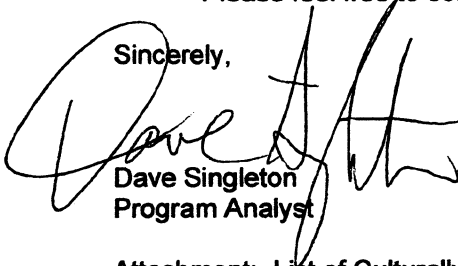
NAHC-7  
continued

Again, Lead agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation.

NAHC-8

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,



Dave Singleton  
Program Analyst

Attachment: List of Culturally Affiliated Native American Contacts

Cc: State Clearinghouse

Native American Contacts  
Orange County  
August 18, 2010

Ti'At Society  
Cindi Alvitre  
6515 E. Seaside Walk, #C Gabrielino  
Long Beach , CA 90803  
calvitre@yahoo.com  
(714) 504-2468 Cell

Gabrielino Tongva Nation  
Sam Dunlap, Chairperson  
P.O. Box 86908 Gabrielino Tongva  
Los Angeles , CA 90086  
**samdunlap@earthlink.net**  
  
(909) 262-9351 - cell

Juaneno Band of Mission Indians Acjachemen Nation  
David Belardes, Chairperson  
32161 Avenida Los Amigos Juaneno  
San Juan Capistrano CA 92675  
**DavidBelardes@hotmail.**  
(949) 293-8522  
(949) 493-4933 - Home

Juaneno Band of Mission Indians Acjachemen Nation  
Anthony Rivera, Chairman  
31411-A La Matanza Street Juaneno  
San Juan Capistrano CA 92675-2674  
**arivera@juaneno.com**  
(949) 488-3484  
  
(530) 354-5876 - cell

Tongva Ancestral Territorial Tribal Nation  
John Tommy Rosas, Tribal Admin.  
  
Gabrielino Tongva  
**tattnlaw@gmail.com**  
310-570-6567

Gabrielino Tongva Indians of California Tribal Council  
Robert F. Doramae, Tribal Chair/Cultural  
P.O. Box 490 Gabrielino Tongva  
Bellflower , CA 90707  
**gtongva@verizon.net**  
562-761-6417 - voice  
562-925-7989 - fax

Gabrieleno/Tongva San Gabriel Band of Mission  
Anthony Morales, Chairperson  
PO Box 693 Gabrielino Tongva  
San Gabriel , CA 91778  
**GTTribalcouncil@aol.com**  
(626) 286-1632  
(626) 286-1758 - Home  
(626) 286-1262 -FAX

Juaneno Band of Mission Indians  
Alfred Cruz, Culural Resources Coordinator  
P.O. Box 25628 Juaneno  
Santa Ana , CA 92799  
**alfredgcruz@sbcglobal.net**  
714-998-0721  
714-998-0721 - FAX  
714-321-1944 - cell

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106 and federal NAGPRA. And 36 CFR Part 800.3.

This list is only applicable for contacting local Native Americans for consultation purposes with regard to cultural resources impact by the proposed SCH#2010081014; CEQA Notice of Completion; proposed Mitigated Negative Declaration for the Atlanta Avenue Widening Project (CDP No. 2009-001, CUP No. 2009-019); located in the City of Huntington Beach; Orange County, California.

ATTACHMENT NO. 4.67

Native American Contacts  
Orange County  
August 18, 2010

Juaneno Band of Mission Indians  
Adolph 'Bud' Sepulveda, Vice Chairperson  
P.O. Box 25828                      Juaneno  
Santa Ana , CA 92799  
bssepul@yahoo.net  
714-838-3270  
714-914-1812 - CELL  
bsepul@yahoo.net

Juaneno Band of Mission Indians  
Sonia Johnston, Tribal Chairperson  
P.O. Box 25628                      Juaneno  
Santa Ana , CA 92799  
sonia.johnston@sbcglobal.net  
(714) 323-8312

Juaneno Band of Mission Indians  
Anita Espinoza  
1740 Concerto Drive                      Juaneno  
Anaheim , CA 92807  
(714) 779-8832

United Coalition to Protect Panhe (UCPP)  
Rebecca Robles  
119 Avenida San Fernando                      Juaneno  
San Clemente CA 92672  
(949) 573-3138

Gabrielino-Tongva Tribe  
Bernie Acuna  
1875 Century Pk East #1500 Gabrielino  
Los Angeles , CA 90067  
(310) 428-7720 - cell  
(310) 587-2281

Juaneno Band of Mission Indians Acjachemen Nation  
Joyce Perry; Representing Tribal Chairperson  
4955 Paseo Segovia                      Juaneno  
Irvine , CA 92612  
949-293-8522

Gabrielino-Tongva Tribe  
Linda Candelaria, Chairwoman  
1875 Century Park East, Suite 1500  
Los Angeles , CA 90067                      Gabrielino  
lcandelaria1@gabrielinoTribe.org  
310-428-5767- cell  
(310) 587-2281

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106 and federal NAGPRA. And 36 CFR Part 800.3.

This list is only applicable for contacting local Native Americans for consultation purposes with regard to cultural resources impact by the proposed SCH#2010081014; CEQA Notice of Completion; proposed Mitigated Negative Declaration for the Atlanta Avenue Widening Project (CDP No. 2009-001, CUP No. 2009-019); located in the City of Huntington Beach; Orange County, California.

ATTACHMENT NO. 4.68



# CITY OF HUNTINGTON BEACH

## ENVIRONMENTAL BOARD

September 2<sup>nd</sup>, 2010

Jennifer Villaseñor  
City of Huntington Beach  
Department of Planning and Building  
2000 Main St  
Huntington Beach, CA 92648

Subject: Atlanta Avenue Widening CC-1389

Dear Ms. Villaseñor,

At the September 2, 2010 Environmental Board meeting, the members reviewed the draft mitigated negative declaration No. 09-001. The Board offers the following comments for your consideration.

### Land Use / Planning:

1. What type of environmental document pursuant to the National Environmental Policy Act will be required to obtain federal authorization? This document should be reviewed concurrently with the MND. It would be helpful to know what the Federal Uniform Act provisions are for properties affected by this project.

EB-1

### Air Quality:

1. The project will result in localized significance thresholds for PM10 to be exceeded. Will a mitigation monitoring and reporting plan (MMRP) be prepared for proposed measures AQ-1? Should this plan be part of the MND?
2. How will the monitoring plan evaluate compliance with "The construction contractor shall not discharge smoke, dust, equipment exhaust, or any other air contaminant to the atmosphere in such quantity as will violate any federal, state or local regulation"?

EB-2

EB-3

### Utilities / Service Systems:

1. Relocating utility poles provides an opportunity for possible undergrounding which provides for improved vistas and public safety. Evaluate placing relocated utilities underground.

EB-4

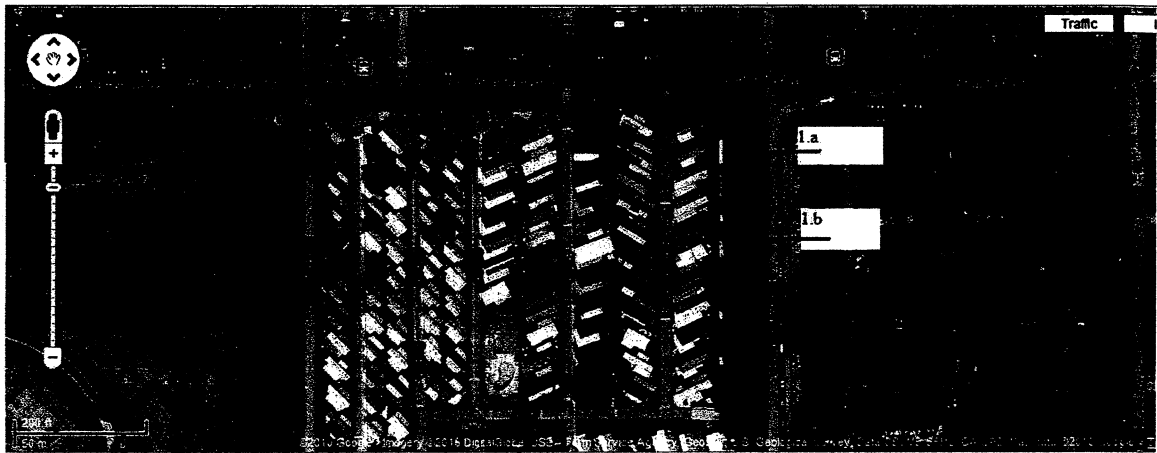
ATTACHMENT NO. 4.69

Population / Housing:

1. The Board recognizes the significant impact the project will have on a number of inconvenienced mobile homeowners. Use of area on eastern edge of mobile home park presently used for RV and boat storage could be considered for relocation of displaced mobile homes. (See 1.a below)
2. Use of area east of block wall on eastern side of mobile home park (vacant property between block wall and Delaware St.) in conjunction with property above for relocation of displaced mobile homes, and new landscaping. (Not sure of property ownership) (See 1.b)

EB-5

EB-6



Hydrology / Water Quality

1. The Board recognizes innovative and environmentally friendly products exist for new street paving, such as permeable / pervious pavement which benefit storm water management, and reduce effects of Urban Heat Island (UHI). The Board recommends exploring such materials.

EB-7

We appreciate the opportunity of reviewing this project. Please contact us with any questions or concerns.

Sincerely,

Robert Schaaf  
Chairman, Huntington Beach Environmental Board

1. <http://www.builditgreen.org/attachments/wysiwyg/22/CD-Waste-Diversion.pdf>

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SEP 03 2010

August 31, 2010

Dept. of Planning  
& Building

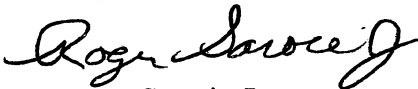
Hello Jennifer,

I live in Space 502 and this is my comment about Atlanta Avenue Widening Project. What a waste of taxpayers' money! I've lived by Atlanta for 5 years now. There are about 2 days out of the year where widening Atlanta would be beneficial. The rest of the year, it's not necessary. However, being a Federal government civil servant for over 30 years, I am well aware of how the government loves to waste money. Working for the government for so long has made me also aware that fighting city hall would be a waste of my time. My only hope is that funding doesn't happen and that this ridiculous project doesn't happen.

One error that I see in the Environmental Report is the amount of residents that are impacted. You should add at least two more residents to the impacted 14 residents. My home has three residents in it, my two sons and myself. I am a FAA Electrical Engineer, on the verge of retiring, who in 2005 moved into his dream retirement home. This is the home you plan on taking from me soon. Also living on Space 502 is a senior at Cal State Fullerton and my other son who has a severe mental illness (paranoid Schizophrenic). I believe you have calculated only one resident in my home because I have not gotten around to officially notifying management that my two sons moved in with me. One moved in with me in 2007 and the other in 2008.

My final comment is, "May your plans fall apart and the widening of Atlanta never happen!"

Respectfully,



Roger Savoie Jr.  
80 Huntington St. #502  
Huntington Beach, CA 92648

SAVO-1

ATTACHMENT NO. 4.71



**HK&C**  
HART, KING & COLDREN

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Dept. of Planning  
& Building

Robert S. Coldren  
rcoldren@hkclaw.com

August 31, 2010

Our File Number: 36608.005/4819-6055-9111v.1

VIA FACSIMILE AND U.S. MAIL  
(714) 374-1540

Jennifer Villaseñor  
Acting Senior Planner  
Planning and Building Department  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

Re: **Atlanta Avenue Widening Project ("Project")**  
**Cover Letter re Comments on Mitigated Negative Declaration ("MND")**

Dear Ms. Villaseñor:

I am writing this cover letter to accompany the enclosed comment letter on the MND for the Project. We have previously expressed the desire to work together with the City to achieve a mutually favorable result with respect to the taking of portions of the Pacific Mobilehome Park and other changes to the Park resulting from the Project.

We are submitting the enclosed comment letter to preserve the rights of the Park property owner to challenge the Project in the event we are not able to timely achieve a mutually favorable resolution. However, we do not want the comment letter to be misconstrued as a change in our desire to work out a mutually favorable result or as a current desire to litigate this matter.

Given that the short time frame available for challenge under CEQA might force us to file litigation to further preserve the rights of the property owner, it is incumbent that we redouble our efforts to achieve a mutually favorable resolution within the next couple of months. Alternatively, it might make sense for the City to place the Project and MND on hold until there is funding for the Project acquisition and relocation.

HKC-1

HKC-2

A Professional Law Corporation  
200 Sandpointe, Fourth Floor, Santa Ana, California 92707  
Ph 714.432.8700 | www.hkclaw.com | Fx 714.546.7457

ATTACHMENT NO. 4.72



HART, KING & COLDREN

City of Huntington Beach  
Re: Atlanta Avenue Widening Project  
August 31, 2010  
Page 2

We would be glad to meet with you to set up a framework and timetable for resolution of matters pertaining to the Project. Please contact me to set up a meeting.

Sincerely,

HART, KING & COLDREN

A handwritten signature in black ink, appearing to read 'Robert S. Coldren', written over the printed name.

Robert S. Coldren

BLH/dr

Enclosure: Comment Letter on MND for Project

cc: Mark Hodgson

ATTACHMENT NO. 4.73

# HK&C

HART, KING & COLDREN

Robert S. Coldren  
rcoldren@hkclaw.com

August 31, 2010

Our File Number: 36608.005/4847-3600-0519v.1

VIA FACSIMILE AND U.S. MAIL  
(714) 374-1540

Jennifer Villaseñor  
Acting Senior Planner  
Planning and Building Department  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

Re: Atlanta Avenue Widening Project ("Project")  
Comments on Mitigated Negative Declaration ("MND")

Dear Ms. Villaseñor:

We represent the owner of the Pacific Mobilehome Park, whose property would need to be taken for the proposed Project. This letter constitutes the Park Owner's comments on the City's MND for the Project. The City should not approve the Project or the MND for the following reasons:

1. There is no substantial evidence of public necessity for the Project which involves the taking of private Park property on which resident mobile homes are located.
2. An Environmental Impact Report ("EIR") should have been prepared because the MND wrongfully fails to consider that part of the Project which involves relocation of Park residents, which relocation, if considered, would require preparation of an EIR.
3. An EIR should have been prepared because there is a fair argument that the Project, as mitigated, may have significant impacts on the environment, particularly regarding land use, housing, growth, air quality, drainage, noise and biological resources impacts.

HKC-3

## THE MND CONTAINS NO SUBSTANTIAL EVIDENCE OF PROJECT PUBLIC NECESSITY

In order for the Project which encompasses the taking of private Park property to be lawful, the City must establish the public necessity for the Project. (See Code Civ. Proc., 1240.030) The MND does not point to any anticipated Park change in use that will justify building out the adjacent street to the maximum general plan width. In addition, the MND candidly admits that there is no current funding source that would allow the Project to be built within the near future.

HKC-4

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The MND alleges that the Project is made necessary by the previous approval of the mixed use Pacific City Development just west of the Project, which Development widened Atlanta Avenue to its ultimate location, leaving an alleged "choke point" along Atlanta Avenue where the Park is located.

According to the MND, the existing 26 foot offset in the south curb alignment at the intersection of Atlanta Avenue and Huntington Street "requires additional motorist decisions" and creates "a greater potential for merging accidents and motorists inadvertently driving vehicles off of the street."

Neither the MND nor the traffic study attached thereto provide evidence to support this conclusion regarding the alleged safety issues pertaining to the existing south curb offset. The MND provides no evidence of a greater number of accidents at the intersection of Atlanta Avenue and Huntington Street, no evidence of a greater number of vehicles running off the street, and no evidence of traffic backups resulting from the south curb offset. Indeed, some of the most heavily traveled roads, highways and interstates in Southern California have well marked lane reductions without any significant reductions in safety.

HKC-4  
continued

The traffic study attached to the MND provides substantial evidence to the contrary of the MND justification for the Project. The traffic study demonstrates that regardless of the Project there will be significant traffic obstruction at the intersection of Atlanta Avenue and Huntington Street unless there is a traffic signal light placed at that intersection. With a traffic signal light, traffic obstruction at the intersection is avoided. The traffic study glaringly fails to study whether a signal light without the Project would relieve any existing traffic obstruction, although it is clear from the traffic study that the Project without a traffic signal light will not.

Therefore, the MND does not provide evidence of the public necessity for the proposed Project and its relocation of Park resident mobile homes. Instead it provides evidence that the Project is both not needed and not presently viable.

#### **THE MND CONTAINS AN INADEQUATE PIECEMEAL PROJECT DESCRIPTION**

The California Environmental Quality Act ("CEQA," Pub. Res. Code 21000 et seq.) is a comprehensive scheme designed to provide long-term protection to the environment. CEQA is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (See *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112)

An EIR is the heart of CEQA. Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment but also informed self-government. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn 2)

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A negative declaration is proper only if the public agency determines based on an initial study



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that there is no substantial evidence that the project may have a significant effect on the environment. (Pub. Res. Code, § 21080 (c) (1) & (d); 14 Cal. Code Regs., §§ 15063 (b) (2), 15070 (a)) An EIR must be prepared whenever there is a fair argument on the basis of substantial evidence that the project will have significant environmental impact. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75)

A proper initial study requires that "all phases of project planning, implementation and operation ... be considered." (14 Cal. Code Regs., § 15063 (a) (1)). Indeed, an accurate, stable and finite project description is the sine qua non of informative and legally adequate environmental review. (See *Burbank-Glendale-Pasadena Airport v. Hensler* (1991) 233 Cal.App.3d 577, 592)

An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity. A narrow view of a project could result in the fallacy of division, that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole. (See *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143)

For these reasons, CEQA mandates that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have a significant impact. (See *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452) CEQA defines the term "project" broadly to include the whole of an action, direct and indirect impacts on the environmental, and any subsequent discretionary actions of the government agencies. (See *McQueen v. Board of Directors*, *supra*, 202 Cal.App.3d at 1143)

The MND describes the Project as the widening of the south side of Atlanta Avenue between Huntington Street and Delaware Street to comply with the primary arterial street classification in the City's General Plan Element. Currently there is one lane of traffic on the south side. The Project will add an additional lane, a bike lane and a sidewalk along the south side of Atlanta Avenue.

The MND lists the scope of the Project to encompass condemnation of Park land, removal and relocation of eight mobile homes, clearing and grubbing of the land, construction of an asphalt concrete roadway, striping, curb, gutter, sidewalk, an 8-foot tall concrete block wall atop a retaining wall possibly 7-feet in height, landscaping that includes the removal of 25 mature trees, reconstruction of a circulation road within the Park, construction of two emergency access gates within the Park, utility and fire hydrant relocation, relocation of a drainage catch basin, relocation of utility poles and overhead lines.

The MND states that the Project will require approval of a conditional use permit for the block wall and a coastal development permit. However, the MND makes no attempt to describe any potential conditions for approval of a conditional use permit or coastal development permit.

Despite its acknowledgement that the Project will require relocation of eight mobile homes, the MND inappropriately claims that the City cannot conduct environmental review for the relocation

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continued

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impacts because the City cannot yet determine whether relocation from the Park will be required because the City has not yet obtained funding for the Project.

The City's reasoning here is faulty. The lack of current funding for the Project, while relevant to whether there is public necessity for the Project, does not prevent the City from performing an analysis of whether there is sufficient room for relocation within the Park for those mobile homes that will be moved. Therefore the MND description of the Project is inadequate and incomplete.

It appears that the City is deliberately trying to avoid preparing an EIR by segmenting the Project so that it does not include relocation of Park residents. Under CEQA, there is a mandatory finding of significance if the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly. (14 Cal. Code Regs., § 15065)

A road widening project that will displace several families and result in the loss of the residential community characteristic of the area will clearly cause substantial adverse effects on human beings. (See *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1003) Therefore, by improperly segmenting or piece-mealing the Project, the City violates CEQA. An EIR rather than the MND should have been prepared.

**THERE IS FAIR ARGUMENT OF SIGNIFICANT  
PROJECT IMPACTS ON THE ENVIRONMENT**

A mitigated negative declaration is appropriate only if project revisions avoid or mitigate the potentially significant effects that are identified or that should have been identified in the initial study to the point where no significant effect on the environment would occur. (See Pub. Res. Code § 21064)

Under CEQA a significant effect on the environment means a substantial or potentially substantial adverse change in the environment. (Pub. Res. Code, § 21068) Appendix G of the CEQA Guidelines provides a checklist of significant environmental impacts that an agency should evaluate for a project in its initial study. The initial study checklist is included in the MND. The MND initial study checklist contains several erroneous and/or factually unsupported findings regarding significant environmental impacts and/or mitigation thereof:

1. **Land Use and Planning.**

a. **Conflict with Existing Land Use Regulation.** The MND incorrectly finds that the Project will not conflict with any applicable land use regulation of an agency over the Park.

The MND expressly states that the City will need to issue a new conditional use permit for the large (possibly as high as 15 feet) block wall that will be part of the Project. Such a wall is not currently permitted under the Park conditional use permit and would impose additional burdens and conditions on the Park Owner. However, the MND fails to discuss what conditions

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continued

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HKC-8



HART, KING & GOLDREN

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might be involuntarily imposed on the Park Owner and the impacts of those conditions on the existing conditional use permit. The MND also fails to address any impacts of a 15 foot wall ore removal of existing mature trees on the scenic coastal views of nearby residents.

HKC-8  
continued

The MND also reveals that it will need an additional coastal development permit but fails to discuss whether the Project complies under the requirements for such a permit and fails to address the potential impact of Project's displacement of housing under the Ellis Act. Thus, an EIR is needed to analyze the scope of the new conditional use permit and coastal development permit required for the Project, including the impact of any conditions that would be associated with such permits.

HKC-9

c. Divide an Established Community. The MND also wrongfully claims that the Project will not divide an established community. The MND clearly will remove 8 mobile homes from the Park and thus divide them from the Park community, reconfigure an access road within the Park, and impose a block wall that will result in grade separation and impede open access to the street. These are definite physical changes to the environment that will divide and segment the established Park community. Therefore, an EIR is needed to analyze the Project impacts to the Park community.

HKC-10

## 2. Population and Housing.

a. Induce Substantial Population Growth. The MND erroneously claims that the City need not study the growth inducing impact of the street widening because it is within growth projected by the City's General Plan. The growth inducing impacts of a street widening project must be studied and discussed in an EIR regardless of whether they are anticipated by the City's General Plan. (See *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1332 ["conformity with the general plan for the area ... does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects"]) Therefore, an EIR is required to evaluate the Project's growth inducing impacts.

HKC-11

b/c. Need for Replacement Housing. The MND erroneously claims that it cannot make decisions about replacement housing until it receives Federal highway funds, and thus wrongfully puts off for later mitigation in the form of a relocation plan. There is nothing in the lack of present funding that prevents the City from determining the potential place and type of relocation housing at the current time. The use of a future study or plan cannot substitute as mitigation for a significant environmental effect in the MND. (See *Sunstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307) Thus, an EIR is required that includes a relocation plan.

HKC-12

## 4. Hydrology and Water Quality.

c. Alter Drainage Pattern. The MND erroneously claims that the Project will not substantially alter the existing drainage pattern of the area despite its admission in section

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4.a. that the existing storm drain at the south side of Atlanta Avenue will be relocated and that there will need to be reconstruction of the Park on-site drive aisle and a grade change. Grade and location changes can substantially alter the ability of the existing on-site drainage system to adequately contain drainage flows. Those impacts to the Park drainage system should be studied in an EIR.

HKC-13  
continued

5. Air Quality. The MND makes unsupported assumptions about mitigation of short term air quality impacts and erroneously fails to consider long term air quality impacts of the Project.

a/b. Violate Air Standards/Sensitive Receptors. With respect to the short term impacts, the MND acknowledges that construction of the Project will cause significant air quality impacts. The MND admits that the mitigation measures, if completely successful "can" at the maximum, only result in a 50 percent reduction in particulates matter. The MND then leaps to an unsupported conclusion that a 50 percent reduction will somehow get rid of all of the 40% excess of particulate matter, not just 50% thereof. An EIR is required to study whether the mitigation measures will reduce particulates matter to a less than significant level.

HKC-14

e. Cumulative Increase in Emissions. The MND erroneously fails to consider the cumulative impact of potential increased traffic on long term emissions resulting from the Project. An EIR is required to study the impact of increased future emissions from additional traffic enabled by the Project.

HKC-15

7. Biological Resources. The MND improperly fails to contain a tree replacement plan that would allow for replacement of the mature trees in the Park that will be eliminated.

HKC-16

10. Noise. The MND wrongfully fails to admit that construction noise is a significant impact of the Project, despite its acknowledgement that construction noise levels will increase the ambient noise levels for residents located within 50 feet more than 25 dBA up to 98 dBA, an intolerable amount despite what the City ordinance allows during daytime. The mitigation measures suggested thus are not evaluated as to whether they bring the noise levels to a less than significant level. An EIR is required to determine mitigation measures that will reduce Project noise for Park residents to a less than significant level.

HKC-17

18. Mandatory Findings of Significance. While the MND admits to all three mandatory findings of significance, the MND insists, without any substantive discussion, that the minor mitigation measures proposed will suffice. The MND also fails to admit to all of the significant effects, including land use, housing, population, traffic, drainage and noise impacts.

HKC-18

In essence, the Project is similar in many respects to the project in the *Friends of "B" Street* case where an EIR was required:

In the present case the adoption of a negative declaration was an abuse of discretion. The city's initial study revealed that the short





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term effects of the "B" Street Project include increased dust and auto exhaust, disruption of business during the construction of the project, and increased bank erosion and possible loss of wildlife habitat along San Lorenzo Creek during construction of a bridge. Among the long term effects of the project are increased traffic, increased noise, paving and removal of grass and garden areas, the removal of vegetation, landscaping, shrubs and hedgerows, the removal of 153 mature trees (some more than 80 years old) which presently line the street, and the elimination of on-street parking on "B" Street and Center Street, aggravating present parking problems that already exist in the area. Two neighborhood stores would be removed, and 12 families would be displaced due to the removal of residential structures. The project would result in the loss of the residential community characteristic of the area, and a decrease in residential property values. The residential desirability of adjacent properties would be adversely affected by the increased noise and exposure to traffic, reduced setbacks of the structures from the street, and the loss of on-street parking. The conversion of single-family dwellings to commercial or multi-family use would be accelerated. The project would also result in a decreased visual or aesthetic quality of the area due to the removal of the trees, grass and garden areas, and the decrease in the setback of the structures from the street. This evidence indicated that a finding of significant environmental effect was mandatory. (Cal. Admin. Code, tit. 14, § 15082.) The trial court correctly determined that there was substantial evidence that the "B" Street Project might have a significant environmental effect. (*Friends of "B" Street v. City of Hayward*, *supra*, 106 Cal.App.3d at 1003)

HKC-18  
continued

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ATTACHMENT NO. 4.80



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In conclusion, the failure of the MND to recognize the numerous significant environmental impacts resulting from relocation of residents, road widening, alteration of drainage and noise and the failure of the MND to sufficiently mitigate impacts resulting from the Project require the preparation of an EIR. The MND fails to analyze the whole of the Project and demonstrates that the Project is not necessary or viable at this time. An EIR should be prepared to appropriately analyze the Project.

HKC-19

Sincerely,

HART, KING & COLDREN

Robert S. Coldren

BLH/dr

cc: Mark Hodgson

ATTACHMENT NO. 4.81